



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 21, 2011

Ms. Katie Lentz
Open Records
Williamson County Sheriff's Office
508 South Rock Street
Georgetown, Texas 78626

OR2011-03837

Dear Ms. Lentz:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 412036.

The Williamson County Sheriff's Office (the "sheriff") received a request for all medical records pertaining to a named individual. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses information made confidential by other statutes. You assert the information you have marked constitutes medical records, which are

¹We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than those submitted to this office.

subject to the Medical Practice Act (the "MPA"), subtitle B of title 3 of the Occupations Code. *See* Occ. Code §§ 151.001-165.160. Section 159.002 of the MPA provides, in part:

(a) A communication between a physician and a patient, relative to or in connection with any professional services as a physician to the patient, is confidential and privileged and may not be disclosed except as provided by this chapter.

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

(c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Id. § 159.002(a)-(c). This office has concluded the protection afforded by section 159.002 extends only to records created by either a physician or someone under the supervision of a physician. *See* Open Records Decision Nos. 487 (1987), 370 (1983), 343 (1982). This office has also determined when a file is created as the result of a hospital stay, all of the documents in the file that relate to diagnosis and treatment constitute either physician-patient communications or records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician. *See* Open Records Decision No. 546 (1990). Medical records must be released upon the patient's signed, written consent, provided the consent specifies (1) the information to be covered by the release, (2) reasons or purposes for the release, and (3) the person to whom the information is to be released. Occ. Code §§ 159.004, .005. Any subsequent release of medical records must be consistent with the purposes for which the governmental body obtained the records. *See id.* § 159.002(c); Open Records Decision No. 565 at 7 (1990).

We find the information we have marked constitutes medical records. The requestor has provided an authorization for disclosure of health information signed by the named individual whose medical records are at issue. If the sheriff determines the requestor has provided proper consent in accordance with the MPA, the medical records we have marked must be released. If the sheriff determines the requestor has not provided proper consent, the medical records we have marked must be withheld under section 552.101 of the Government Code in conjunction with the MPA. However, we find you have failed to demonstrate how any of the remaining information constitutes medical records for purposes of the MPA. Accordingly, no portion of the remaining information may be withheld under section 552.101 of the Government Code in conjunction with the MPA.

Section 552.101 of the Government Code also encompasses section 611.002(a) of the Health and Safety Code, which pertains to mental health records and provides "[c]ommunications between a patient and a professional, and records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional, are confidential." Health & Safety Code § 611.002(a). Sections 611.004 and 611.0045 provide for access to mental health records by only certain individuals. *See* ORD 565. These sections permit disclosure of mental health records to a patient, a person authorized to act on the patient's behalf, or a person who has the written consent of the patient. Health & Safety Code §§ 611.004, .0045. We find the information we have marked constitutes mental health records that are confidential under section 611.002 of the Health and Safety Code. As previously noted, however, the requestor may be authorized to obtain these mental health records. *See id.* Therefore, if the sheriff determines the requestor is authorized by sections 611.004 and 611.0045 of the Health and Safety Code to obtain the mental health records we have marked in accordance, the sheriff must release these records. If the sheriff determines the requestor is not so authorized, the mental health records we have marked must be withheld under section 552.101 of the Government Code in conjunction with section 611.002 of the Health and Safety Code.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. The types of information considered intimate or embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. In addition, this office has found some kinds of medical information or information indicating disabilities or specific illnesses is protected by common-law privacy. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). You claim portions of the remaining information are excepted under common-law privacy. However, as previously noted, the requestor has provided a signed authorization form from the individual whose information is at issue. Section 552.023 of the Government Code provides "[a] person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests." *See* Gov't Code § 552.023(a); *see also id.* § 552.023(b) (governmental body may not deny access to person to whom information relates, or that person's representative, solely on the grounds that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual or individual's authorized representative requests information concerning the individual). Thus, the requestor, as the authorized representative

of the named individual, has a right of access to the individual's private information pursuant to section 552.023(a), and this information may not be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

You have also marked portions of the remaining information that you seek to withhold under sections 552.130 and 552.147 of the Government Code. These sections protect a person's Texas motor vehicle information and social security number. See Gov't Code §§ 552.130, .147. We note, however, that sections 552.130 and 552.147 protect personal privacy. As noted above, the requestor is the authorized representative of the individual whose information is at issue and has a special right of access under section 552.023 of the Government Code. See *id.* § 552.023. Thus, the sheriff may not withhold any of the information marked pursuant to sections 552.130 and 552.147 from this requestor.²

In summary, if the sheriff determines the requestor has provided proper consent in accordance with the MPA, the sheriff must release the medical records we have marked. Otherwise, the sheriff must withhold the marked medical records under section 552.101 of the Government Code in conjunction with the MPA. If the sheriff determines the requestor is authorized by sections 611.004 and 611.0045 of the Health and Safety Code to obtain the mental health records we have marked, the sheriff must release this information. Otherwise, the sheriff must withhold the marked mental health records under section 552.101 of the Government Code in conjunction with section 611.002 of the Health and Safety Code. The remaining information must be released.³

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php,

²Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. In addition, this office issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including a Texas driver's license number, under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision. As noted, however, the requestor in this situation has a special right of access to this information. However, if the sheriff receives another request for this information from an individual other than one with a right of access under section 552.023, the sheriff is authorized to withhold the social security number and Texas driver's license number at issue without the necessity of requesting an attorney general decision.

³We note because the requestor has a special right of access to some of the information in this instance, the sheriff must again seek a decision from this office if it receives another request for the same information from a requestor without such a right of access.

or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read 'Sarah Casterline', with a large circular flourish at the end.

Sarah Casterline
Assistant Attorney General
Open Records Division

SEC/tf

Ref: ID# 412036

Enc. Submitted documents

c: Requestor
(w/o enclosures)